

# **EXHIBIT B**

**Third Supplemental Declaration of  
Richard Heuser, M.D., F.A.C.C., F.A.C.P.**

**Filed in co-pending application Serial No. 10/179.589**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: James P. Elia	)	
	)	Group Art Unit: 1646
Serial No.: 10/179,589	)	
	)	Examiner: Daniel C. Gamett
Filed: June 25, 2002	)	
	)	
For: METHOD FOR GROWING	)	
HUMAN ORGANS AND	)	
SUBORGANS	)	

**THIRD SUPPLEMENTAL DECLARATION  
OF RICHARD HEUSER, M.D., F.A.C.C., F.A.C.P.**

I Richard Heuser declare as follows:

1. I have offices at 500 West Thomas Road, Suite 900, Phoenix, Arizona 85013.
2. My Curriculum Vitae was attached as Exhibit A to my Declaration of November 16, 2004. Paragraph 3 of my Declaration and my Supplemental Declaration of February 15, 2005 provide additional information regarding my background and experience.
3. I have read the Examiner's criticism contained in paragraph 11, commencing on page 7 and ending on page 9 of the March 7, 2007 Office Action regarding the conversion of dosages of plasmid cDNA to dosages of cells. Such paragraph is set forth in Third Supplemental Exhibit A attached hereto. Specifically, I note the Examiner's criticism bridging pages 7 and 8 regarding the above-mentioned conversion that:

...one of skill in the art would never think to attempt such an extrapolation. The unsound scientific basis for the conversion of plasmid DNA to cellular equivalents would be obvious to anyone trained in molecular biology.

4. I have read and understood the disclosures of the above-referenced patent application at page 4, line 1 through page 5, line 14; at page 13, lines 3-10; at page 22, line 5 through page 24, line 15; and at page 26, line 3 through page 27, line 3. A copy of such disclosures is attached hereto as Third Supplemental Declaration Exhibit B.

I have also read and understood additional disclosures of the above-referenced patent application at page 9, lines 14-16; page 17, line 1 through page 20 line 8; page 21, lines 23 and 24; page 27, lines 1-3; page 28, lines 12-16; page 32, line 20 through page 39, line 19; and page 44, lines 8-17. A copy of such additional disclosures is attached hereto as Third Supplemental Declaration Exhibit C.

5. I have read and understood Applicant's conversion for dosages of plasmid cDNA to equivalent corresponding dosages of cells set forth in attached Third Supplemental Exhibit D as it relates to Examples 18 and 17 of the specification, which are contained in Third Supplemental Declaration Exhibit C.
6. In my opinion, the Examiner's criticism specifically delineated in Paragraph 3 above is not credible. Contrary to the Examiner's opinion, studies involving conversion of the average (mean) content of nucleic acids per cell in human marrow cells have been routinely conducted and accepted by skilled scientists for over 50 years. Three (3) publications illustrating the use of such well known conversion are included in the attached Third Supplemental Declaration Exhibit E. Note that in two of

the publications, typical conversion results are set forth in tables, thereby eliminating the necessity to perform the actual calculation. Obviously, a sound scientific basis exists in the medical art for such conversions.

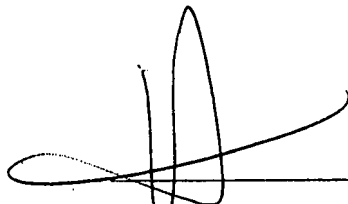
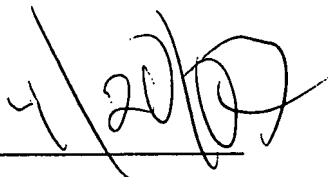
Further, those skilled in the art understand that DNA content is substantially consistent from tissues of any given species. Consequently, a skilled medical person relying on sound scientific bases at the time of the present invention would reasonably have understood how to extrapolate plasmid DNA to cells on a weight basis. Applicant's use of 40 pg as an average weight for nucleic acids in a human cell is fairly representative. Thus, I find Applicant's conversion set forth in the attached Third Supplemental Declaration Exhibit D to be consistent with the extrapolations set forth above and commonly used and relied upon by skilled persons in the medical art. Accordingly, the dosages specified in Examples 18 and 17 are sufficient to enable a person skilled in the medical art to convert dosages of plasmid DNA to corresponding dosages of genomic DNA within the context of Applicant's disclosed invention.

7. Declarant states that the above opinion was reached independently.

Declarant understands that (1) any willful false statements and the like made herein are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon, and (2) that all statements made of Declarant's own knowledge are true and that all statements made on information and belief are believed to be true.

Further Declarant sayeth not.

Date: \_\_\_\_\_

  
Richard Heuser